



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL FFL (Landlord); MNDCT MNSD (Tenant)

This is an application by the landlord under *The Residential Tenancy Act* ("the *Act*") for the following:

- A monetary order for unpaid utilities pursuant to section 67; and
- Authorization to recover the filing fee for this application from the tenant(s) pursuant to section 72.

This is also a cross-application by the tenant under the *Act* for the following:

- A monetary order under section 51(2) in an amount equivalent to double the monthly rent payable under the tenancy agreement; and
- A monetary order for the return of a security deposit under section 38.

The landlord and the tenant both appeared at the hearing. Both were given an opportunity to present affirmed testimony, call witnesses and submit evidence. Both parties acknowledged receiving each other's Notice of Hearing and Application for Dispute Resolution and respective evidence packages. No issues of service were raised. I find each party served in accordance with the *Act*.

At the outset, the tenant stated the landlord had returned the security deposit. Accordingly, her claim with respect thereto was withdrawn.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid utilities pursuant to section 67 of the *Act*; and

- Authorization to recover the filing fee for this application from the tenant(s) pursuant to section 72.

Is the tenant entitled to the following:

- A monetary order under section 51(2) in an amount equivalent to double the monthly rent payable under the tenancy agreement.

### Background and Evidence

The parties agreed they entered into a tenancy agreement starting September 1, 2016. A copy of the tenancy agreement was submitted as evidence.

The tenant paid \$600.00 at the beginning of each month, being rent of \$550.00 plus \$50.00 for utilities. The tenant vacated on September 30, 2018. The tenant provided a security deposit in the amount of \$275.00 which a previous Arbitrator ordered the landlord to return to the tenant in a decision and order dated June 13, 2018; the parties referred to the Decision referenced on the first page of this decision.

The tenancy agreement does not contain any provisions regarding the payment of utilities.

The landlord's home and the unit are connected. Each had a separate meter for the power utility. Both utility accounts are in the landlord's name. The landlord paid both accounts throughout the tenancy. The landlord testified the parties had a verbal agreement that utilities relating to the tenant's unit were the responsibility of the tenant. She stated that she repeatedly asked the tenant to put the utilities in the tenant's name. The landlord claimed she made repeated demands to the tenant to pay the utility bills as they came due which the tenant failed or refused to do. The landlord claims the tenant owes her for utilities throughout the tenancy in the total amount of \$1,747.27.

The tenant denied she owed the landlord anything for utilities. She submitted a copy of the first month's receipt which is for \$600.00; the receipt stated that \$550.00 was for rent and \$50.00 was for utilities. The tenant testified the verbal agreement between the parties was that the tenant would pay \$50.00 a month for utilities and nothing more. The tenant denied the landlord asked her to put the utility account in her name. The tenant denied that the landlord ever requested she pay any more for utilities until the landlord filed this application.

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated September 12, 2017 with an effective date of November

31, 2017. The reason given for the Notice was that “the rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse).”

The tenant provided notice she would vacate on September 30, 2018. In the previous decision, the arbitrator awarded the tenant compensation under section 51 of the *Act* in the amount equal to one month’s rent.

The landlord testified that she issued the Notice because she planned to move her mother into the unit. The landlord testified her mother has not moved in to the unit in the intervening 13 months and estimated that, because of her mother’s poor health, the landlord’s mother will not be able to occupy the unit until approximately April 2018. The landlord stated the unit has been unoccupied since the tenant vacated. The landlord submitted no corroborating evidence with respect to vacancy of the unit.

### Analysis

I have reviewed all the documentary evidence and testimony submitted by the parties. I will only refer to relevant findings in my decision.

### ***Landlord’s Claim***

The landlord claims a monetary order of \$1,747.27 as compensation for payment of utilities associated with the tenancy for which she claims the tenant is responsible.

The landlord has the burden of proving her claim on a balance of probabilities, meaning it is more likely than not to be true. The landlord must submit evidence in support of her claim.

The tenant has submitted testimony and evidence conflicting with the landlord’s claims, raising doubt about what the terms of the contract were between the parties regarding payment of utilities. I am *not* satisfied that the landlord has met the standard of proving on a balance of probabilities that the tenant promised to pay more than \$50.00 a month for utilities.

I do not find that the landlord has produced satisfactory evidence to establish that, on a balance of probabilities, the tenant has a contractual obligation to pay the outstanding utility bills as claimed. The tenancy agreement does not have any terms requiring the

tenant to pay the utility bills and the landlord did not produce any corroborating evidence establishing a contractual obligation owed by tenant to pay the utility expenses.

As such, I dismiss the landlord's request for a monetary award for compensation for reimbursement of utilities without leave to re-apply.

Since I have dismissed the landlord's application, I also dismiss the landlord's claim for reimbursement of the application fee.

### ***Tenant's Claim***

The tenant has requested a monetary award in an amount equivalent to double the monthly rent payable under the tenancy agreement based upon the Two Month Notice issued by the landlord.

Section 49 of the *Act* states that:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

For the purposes of s. 49, the *Act* defines a "close family member" as "an individual, parent, spouse or child, or the parent or child of that individual's spouse". As such, I find the landlord's mother fits the definition of a "close family member".

I further find the Two Month Notice complied with section 52.

Section 51 of the *Act*, stated (as of the date of the Two Month Notice):

(2) Subject to subsection (3), the landlord [...], must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of two times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or  
(*underlining added*)

The landlord testified that the stated purpose in giving the tenant the Two Month Notice was that her parent was going to occupy the unit. The landlord testified the unit has been unoccupied and has not been used for the stated purpose since the

tenant vacated the suite at the end of September 2018, thirteen months before the hearing.

I find the landlord has not met the burden of proving that she took steps to accomplish the stated purpose within a reasonable period after the effective date of the notice.

I therefore find the landlord must pay the tenant an amount equivalent to double the monthly rent of \$550.00 payable under the tenancy agreement, being \$1,100.00 pursuant to section 51(2).

Conclusion

I dismiss the landlord's application without leave to re-apply.

I grant the tenant's application for a monetary award against landlord in the amount of \$1,100.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 2, 2019

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Residential Tenancy Branch